

*In the Matter of Timothy Copeland,  
Police Sergeant (PM2534E),  
Ewing Township  
DOP Docket No. 2004-1761  
(Merit System Board, decided November 4, 2004)*

Timothy Copeland appeals the determination of the Division of Selection Services which denied his request for a make-up examination for Police Sergeant (PM2534E), Ewing Township.

The subject examination was administered on September 23, 2003 and consisted of 90 multiple choice questions. On September 10, 2003, appellant submitted a request for a make-up exam. His submission consisted of a letter from his physician, Dr. Jeffery Abrams, dated September 8, 2003. In his letter, Dr. Abrams indicated that appellant was scheduled for surgery on his left elbow on September 17, 2003 and a three hour examination on September 23, 2003. He stated that "due to the surgery on his left elbow, I do not feel he will be able to take this examination since this is his dominant or writing hand. If possible, please delay his written examination until he has had an opportunity for his left elbow to heal from his surgery." It is noted that appellant did not submit a Department of Personnel Medical Authorization for Public Safety Make-up Examination form. By letter dated October 1, 2003, the Division of Selection Services denied appellant's request since it did not meet the criteria for a make-up test.

On appeal, appellant indicates that he is left-handed and his surgery prevented him from using that hand. He also indicates that his "arm was immobilized following the surgery and I had to keep my arm in a sling attached close to my body for recuperative purposes." He argues that he "didn't intentionally plan on having surgery to miss the Sergeant['s] examination which could impede my career progression." In support of his appeal, Mr. Copeland submits a letter from Dr. Abrams dated October 13, 2003.

## **CONCLUSION**

The Orientation Guide indicated that make-up examinations for police promotional examinations may be authorized, in pertinent part, for debilitating injury or illness requiring an extended convalescent period, provided the candidate submits a doctor's certification containing a diagnosis and a statement clearly showing that the candidate's physical condition precluded his or her participation in the examination. *See N.J.A.C. 4A:4-2.9(b)1.* As a result of the New Jersey Supreme Court decision in *In the Matter of Police Sergeant (PM3776V), City of Paterson*, 176 N.J. 49 (2003), a make-up examination pilot program, which sets the policies and procedures for all public safety exams, went into effect on August 19, 2003 and ran through August 17, 2004. The pilot program provided that make-up examinations for entry-level and promotional public safety exams could be authorized only in cases of: (a) error by the Department of Personnel or appointing authority; (b) death in the candidate's immediate family as evidenced by a copy of the death certificate; (c) catastrophic illness wherein the candidate has either suffered a life-threatening injury or illness, or requires an extended convalescent period, as evidenced by a doctor's diagnosis and statement, as well as documentation from the candidate's employer noting

the candidate's related leave from work; (d) military leave, pursuant to *N.J.A.C. 4A:4-2.9(c)*; or (e) exoneration from pending disciplinary or criminal charges, pursuant to *N.J.A.C. 4A:4-2.9(d)*.

It is noted that the Orientation Guide, on page 16, states, "IMPORTANT: Please review the *Medical Authorization for Make-up Promotional Examination* form DPF-728 (Public Safety or Professional Engineering) listed under "Forms" on our Home Page. ([www.state.nj.us/personnel/forms](http://www.state.nj.us/personnel/forms)).” In addition, the subject announcement, under the section entitled, "Special Examination Information," indicates that "requests for make-up examinations based on medical grounds for public safety promotional exams must include a New Jersey Department of Personnel Medical Authorization for Public Safety Make-up Examination form." Under the section entitled, "Important Information," the announcement also provides, "Requests for make-up examinations based on medical grounds **must** include written documentation from your physician and must include a New Jersey Department of Personnel Medical Authorization for Public Safety Make-up Examination form." The Medical Authorization form, in the section entitled, "Special Accommodations," states, "In many cases, candidates who request a make-up are actually able to take the examination as scheduled when we provide special accommodations at the testing center. The following are some examples of accommodations that we can arrange: A separate room with someone on our staff to read the test out loud and/or mark the candidate's answers on his answer sheet . . ."

In his October 13, 2003 letter, Dr. Abrams stated that on September 17, 2003, Mr. Copeland underwent surgery to his left elbow and he was using a sling. Dr. Abrams indicated that he was unable to use his elbow, forearm and hand outside of the sling for approximately 10 days. Dr. Abrams noted that Mr. Copeland "was unable to take his examination, as per my instructions regarding his activity limitations following his left dominant arm surgery. I anticipate that he will be capable of taking a three-hour written (short answer) by mid to end of October 2003."

As indicated above, candidates were on notice that the Division of Selection Services was prepared to offer reasonable accommodations to permit a candidate to take the test on the original exam date. It is noted that the Division of Selection Services, prior to the exam date, typically contacts a candidate who could take a test on the original exam administration date with an accommodation and informs him or her that they can be provided with an accommodation. It is noted, however, that there is no documentation of such a phone call in Mr. Copeland's original request file. Upon contacting Mr. Copeland, he submitted a notarized statement in which he states that "I 'never' received any documentation or 'via telephone' stating, that I would be offered an accommodation from your staff to mark my answers on the answer sheet, so that I would be able to take the examination as scheduled." Given that there is no record that Mr. Copeland was contacted prior to the exam administration date and informed that he could be provided with an accommodation, good cause exists to relax the provisions of *N.J.A.C. 4A:4-2.9* and permit appellant to take the subject examination.

## **ORDER**

Therefore, it is ordered that this appeal be granted and appellant be scheduled for a make-up examination. In so doing, the remedy provided herein is limited to the facts of this case and may not be used as precedent in any other proceeding.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.